IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3096 OF 2004

M/s House of Bags, .. Petitioners.

Vs

1. Madhu Mahendra Chadha and ors. .. Respondents

M/s S.M.Sakhardane i/b M/s M/s Mandviwala & Co., for the petitioners.

Mr. Basant Tilokani, for the respondents.

CORAM : D.B.BHOSALE,J.

DATE : 30.11.2005.

PC:

1. Heard the learned counsel for the parties.

2. By this writ petition, the petitioners have impugned the order dated 10.3.2004 passed by the Small Causes Court in R.A.E.Suit No.405/585 of 2003, by which the application dated 10.3.2003, allowing the petitioners-defendants to file written statement, which could not be filed within the time prescribed under Order 8 rule 1 of the Code of Civil Procedure, was dismissed. The impugned order reads thus:

"Read application and say -

Heard Advocates for defendants and plaintiffs. Suit summons served on 20.05.2003. W.S.not filed within prescribed time. Not proper to extend time to file W.S. Application dismissed with cost."

3. The learned Judge has overlooked the law laid down by this Court in **Shailaja A.Sawant V. Sayajirao Ganpatrao Patil, 2004 (2) Maharashtra Law journal 419**, while dismissing the application seeking extension of time to file the written statement. The law is now well settled that the provisions of Order 8 rule 1 of CPC are directory in character and not mandatory. Though they cast an obligation on the defendants to file written statement within the time prescribed therein, the provisions do not deal with nor specifically take away the power of the Court to take written statement on record though filed beyond the time as prescribed for therein. This is also settled by the Supreme Court in **Kailash Vs. Nankhu and ors, (2005) 4 SCC 480**. Thus, it is clear that the Court has power to take the written statement on record beyond the time as prescribed under Order 8 rule 1. However, it has to bear in mind a note of caution recorded by the Apex Court as well as this

Court in the Judgments aforestated while extending the time to take the written statement on record. It is in this view of the matter, I am satisfied that the following order would meet the ends of justice.

(a) The impugned order dated 10.3.2004 is quashed and set aside. The application is restored to file.

(b) The trial Court shall decide the application dated 10.3.2003 seeking permission to file the written statement beyond the period prescribed under Order 8, rule 1 of CPC afresh after giving an opportunity of being heard to the parties and allowing them to place additional material, if any, in support of their contention.

(c) It is open for the petitioners to place their written statement which, according to the learned counsel for the petitioners, was ready on the date of filing of the application itself, on record along with a copy of this order. The trial Court shall decide the application within three months from the date of receipt of this order.

(d) The petitioners to produce a copy of this order before the trial Court within two weeks from today.

(e) The writ petition is disposed of.

(D.B.Bhosale,J.)